

Notes From  
Councilmember Nancy Floreen's Forum  
December 10, 2005  
Johns Hopkins University – Montgomery County Campus

## **Planning and Development You Can County On – Accountability in a Post-Clarksburg World**

**Royce Hanson – Moderator, Former Planning Board Chair and Director of GW Center for Washington Area Studies**  
**Gus Bauman – Former Planning Board Chair, Land Use Attorney**  
**John Delaney – Land Use Attorney, AU Law Adjunct Professor**  
**Julie Davis – Attorney and Civic Activist**  
**Roger Lewis – Architect, Washington Post Columnist**  
**Jim Soltesz – Civil Engineer, Loiederman Soltesz Associates**  
**Dan Wilhelm – President, Montgomery County Civic Federation**

What can we really do to establish a best-management practices process?

Derick - Park and Planning understands that you can't fix the problem until you own it. Park and Planning has owned up to their responsibility. We are adding new staff, new technology, eventually everything will be accessible on the web.

Royce - This meeting is not about Clarksburg. It certainly is reflective of the Clarksburg situation, but it is about the future.

Roger – Many of the Master Plans and zoning laws are obsolete having been written a long time ago. It is time to review all zoning laws and bring them up to real time

John – We need to accommodate for growth but put it in the areas where growth belongs, residential and commercial should be in Balance

Dan – Citizens need to be involved right from the beginning. The County Council must fund what is needed; often the funding of the infrastructure doesn't happen in time or sometimes not at all. This is what causes the gridlock on the roads and overcrowding in the schools

Julie – The Agricultural Reserve must be preserved, smart growth concepts must be followed but within the guidelines of the Master Plans. The plans must be the guiding document. The Master Plan is important because it becomes the learning process for each area; it is a time when the citizens and elected officials focus on the area. We can

deal with the growth, but it has to be done carefully, no window dressing but instead real community involvement, with the residents involved right from the start.

Jim – In the past, we were carving up farms for development, working with large green fields and dealing with acres and feet. Now we are usually looking into urban areas, so we are often dealing with inches. Master plans are important, but we need flexibility,

Royce – From here on in we are probably going to be retrofitting, so we need a different set of standards. What should they be?

Gus – early 70s, Royce was chairman, and I was their counsel. Planning was just getting started, and we were inventing ideas and zones as we went along, i.e., CBDs, (metro was coming, and we knew we were going to need to put things into smaller places). The first station opened in 1978 in Silver Spring. Most of the new zones were litigated, but that helped develop the case law that still governs. After creating zones, the concept of the sector plan came into use. The Friendship Heights Plan was the first one we did; the plans and the zones were created to deal with the coming changes – metro and density. With the changes in density coming into the down county, we began working on the agriculture reserve concept, and the TDR program was created. The purpose of all this was because we were next to the capital, and we knew people were going to want to live here. We had to plan for this. The General Plan – the wedges and corridors concept – was created to address all the aspects of what we expected was going to come. That Plan was completed in 1964, and we really haven't wavered very far from that design, the historic wedges and corridors concept in all these years. There has been a hiccup in recent months, but it is amazing the hiccup didn't come sooner and that it has been as solvable as it is.

Royce – Overall the General Plan has prevailed. Can we still adhere to it with the need for environmental strictures, demographic changes? Do we need different kinds of plans now that we are near buildout? What should the Planning Board be doing in regard to these changes?

Roger – We need more fine-grained planning – traditional planning documents won't work any more. Conventional zoning has failed. One problem is that resources available to the planners are underfunded. There is the need for citizens and professionals working together to complete good, fine-grained plans. Plans need more details so people know what to expect.

Jim – There is a shortage of highly qualified planners/engineers: I feel it in my business, so I know Park and Planning must also feel it. There is a need for more flexibility, not less. Once out in the field - environmental constraints and other problems are often not known when the Master Plans and site plans are completed. Also, there is a vision in the Master Plan, and it is fully vetted. But then, especially on larger tracts of land, the visions are developed, but the development may not occur for 4 to 5 years. So if it gets too detailed in the Master Plan, it may be too difficult to deliver the exact product 5 years

later, with ongoing changes in storm water management, environment regulations, new affordable housing requirements, etc.

John – There are two phases of land use and planning. 1 - comprehensive zoning and planning are for the entire community. 2 - then you move into the site-specific phase, and that is the adjudicatory process. The problem is that it is bifurcated between two departments who don't always communicate well. This makes it difficult for those working on the project.

Julie – You can have fine-grained planning and work for flexibility, but if you are going to maintain flexibility, you must have a transparent process. I have concerns that it doesn't help anything to do planning on a piecemeal basis – if there is a need to plan a shopping center on the Pike, you must take into consideration what is happening up the pike and down it so there is consistency and other projects are taken into consideration. We plan the development and think we can worry about the roads and the schools later. We must consider the economics of what is being plan. Can we accommodate what is being planned?

Dan – The process that we used in the eastern part of the County, the Master Plans were prefaced on the transit that was going to come, But it still hasn't come, almost 20 years later. The Concordia process worked well because everyone could be involved with an objective facilitator. This process should be used more often.

Gus – We must map out a schedule to develop and complete the Master Plan then get the Council, the community, and the developer to all buy into it. And it is the Chairman's role to keep to that schedule. If it changes, it becomes a 4 year not a two year process; sometimes too much compromise makes a bad plan. There comes a time when you must make a decision and move on.

Jim – Speed is important, but accuracy is equally important. There are statutory limits, which are good, because we need to have accountability on time. No one wins if the planning process drags on. If the time is accountable, it accommodates all sides, developers, civic groups, etc. The process must be transparent, notice of meetings, information, plans, etc. But we need to improve the time line.

John – Yes, the key elements for success are predictability and transparency.

Julie – Development Review has not included the residents who will be most affected by the project. They are not at the table. You can have lots of deadlines, all the deadlines you want, but the citizens WILL have their day – either at the table or in court. You can have your deadlines, but if you don't have the residents involved, the deadlines won't hold.

Dan – The developer should meet with the community before they come to the planning board; that should be the rule. Having the information on the website would go a long way to helping the process work and people to feel comfortable with the process.

Royce – Please comment on Montgomery County as trendsetter as new powers are proposed.

Gus – New powers may not be necessary. Montgomery County is different than many other places. The County Council has planning powers; the Executive's role is minor. There is reason to keep Legislative Branch in control of planning. Council has enormous power. Final say on zoning and Master Plans. The reason for an independent Planning Board is to be a buffer between politicians and the citizens.

Royce – Comment on the capacity and adequacy of staff resources.

Dan – There is a lack of consistency on rules. If the fix is good, the problems we saw in Clarksburg won't happen any more. One lack – coordination between Planning staff, the Planning Board, DPWT, MCPS, and Fire and Rescue Services. It needs to be a real County plan and hopefully then the finances will be directed to where they were planned and the infrastructure will be there when needed.

Roger – The planning professionals, particularly in the executive branch, have problems because their best judgment is often in conflict with the political thinking. It is problematic, so they can't always make the best recommendations. The challenge is how to ensure the professionals can put forth their best professional recommendations.

Royce – The role of the Planning Board vis a vis staff and Council.

Jim – The staffs are professional, and there are sometimes disagreements between their vision and that of the developer, but you can always work it out. Everyone strives to have the result be that they go before the board with all in agreement. But sometimes it doesn't happen, and the process now allows for us to debate with the Board. That is fair and a good process. At some point you either accept the conditions of approval or you don't build the project.

Julie – The planning process in this County is highly political. Politics does play a role in the process, and that is not bad. Values and community concerns, not just the measurements and regulations, are necessary to create a good plan or project. Just make sure the politics don't overwhelm the process.

Dan – During the master plans for the eastern side of the County, each side argued the visions but not the facts. But the Planning Board should be the final arbitrator of the arguments.

Gus – Land use is political by its nature because it is about where people live and work. If you go to Park and Planning, there are people from all parts of the community talking to staff. It is a far more open system than you have in most other government operations.

Royce – Is the citizen planner obsolete? Do we need a professional Board?

John – No, common sense and the ability to listen are the most important needs for a Board member. There are 4 leading areas of planning: California, New Jersey, Massachusetts, and Maryland  
Maryland has a large amount of case law and is an important state for land use planning. All this case law has made planning laws more definable. But we need to put the enforcement in one place; it should be in DPS. And the site plan should be the governing document.

Julie – Yes, put enforcement in DPS, but you must ensure clear processes and appeal rights. There must be an understanding of what the process is; it must be defined and accessible.

Jim – As an engineer, as long as the plan is clear that is all that is important. He doesn't care where enforcement lies.

Roger – Whoever is the choreographer, just make sure everything is clear and open.

Gus – A citizen board is the right call. Make sure elected officials are not passing on site plans. A citizen board passing judgment after hearing from all parties is the way to go.

Dan – Enforcement needs drastic changes. DPS should be the legs on the site, but the Planning Board and its staff should be dealing with the violations and site plan changes. If citizens are unhappy with the Council's role, it will be noted at election time.

Gus – The County Council is accountable at election time, the Planning Board at reappointment. There should be constant interaction with the Council.

Roger – Real accountability means the Planning Board does its homework and reads all necessary information in order to do a good job.

Jim – Elected officials must understand the importance of land use and zoning and planning to County residents. If the elected officials come out of sync with the residents, the elective process will rule.

Julie – The fact that Maryland is high on land use case law is because they have been in court so often. It is too bad to always have to go to court and the ballot box to get your point across.

If Council and Planning Board did everything you suggested, would everything be great and everyone be happy? I am not sure.

#### Audience participation

Mal Rivkin– 1-hire a planning director with professional credentials, national stature, - we are lacking leadership now. The American Planning Association has authorize me to say they will do its utmost to find and screen applicants. 2-require a course in real estate

development for all planning board members. Even the current members would benefit from knowing more about real estate development. The Urban Institute, ULI, etc. could provide it. We should appoint a County tsar for Clarksburg with staff and administer and enforcement powers for 5 years. Reston and Columbia had something like it and had no Clarksburg situation as a result of the unclear mandates. We need centralization of authority under a public administrator until the problems are resolved.

Dolores Milmoie – The Planning Board should be a buffer between Council but there is so much money from developers that the Council appoints members who the developers want. There are too many 3-2 votes that go for developers.

Question from the audience - Who has standing?

Gus- Everyone must be considered, even if they are not in the room when decisions are being made. This idea is very important

Nadine Mort – Ashton area is trying to get information about a project at their crossroads. Planning Board should put money into getting important information out to the community if there is a project coming there. Park and Planning has a perception problem that the residents are on the outside and can't participate.

Julie – Resources and new staff or redeployment are necessary. There should be easy access to the planning process. Now there is not a good document and record keeping process. There is no place you can go to check on plans if you are trying to follow a project or case. Interested residents need the brochure "Everything you wanted to know about Planning". It should be on the web for downloading, but now a resident has to go to Park and Planning and purchase it. Also, there should be addresses on the Planning Board's agenda for where the project is, not just Silver Spring or Chevy Chase.

Amy Presley – Specificity – in Clarksburg the issue wasn't lack of flexibility; the issue was specificity of what was happening and what was changing. Climate has to be adjusted by enforcement so developer won't feel it is easy to breach the system.

Roger – The County has history of doing master planning, which implies flexibility, but County needs a nested process. Rockville is building a new town center with a very specific plan with lots of details, i.e., exact streetscaping, character of the buildings, etc. But that is not to say that the bigger picture wasn't taken into account. It was a nested process from big picture down to details. That is what works.

Esther Gelman – In the old days when she came on the Planning Board, Master Plans were done behind closed doors. That was all changed. But now Master Plans are developed without a Commissioner in the room. That is a problem. The Planning staff can't tell people that enough is enough; only a Commissioner can do that. Developer money doesn't affect Park and Planning staff; they don't know who gave what to whom and don't care.

Joseph Horgan – My group put out the Accountability Report. If you are going to have enforcement, fines must take away developers profit. The first idea is that the Planning Board now hears from the citizens at the end of the process and then votes. Instead there

should be time for Planning Board members to think about the remarks, a comment period. The second idea is that there should be a sign-in sheet for anyone who comes to see staff, so people know who is meeting with staff or the Board, with addresses.

Diane Cameron – We must establish lawful criteria to document resident participation. The problem like Ashton happened with the Kensington Safeway. The Board's final decision looked political because it did not reflect what the residents wanted.

Gus – In the end, the decisions are always a compromise.

Ginny Barnes – I opposes moving the enforcement to DPS. Planning Board staff is responsive and answers phone calls, and even if we disagree, we can work together. DPS is unresponsive and unaccountable to residents. Their mission statement says that their customer is the permit holder not the neighbors.

Sharon Dooley – Why are roads and schools not built in time?

Gus – People say they don't like sprawl but they also hate density, so when a Master Plan is adopted, with all the levels and work that goes into it, it is in balance; it is the guide the elected officials are supposed to follow. But then it comes to the Council and, sometimes, unfortunately, the budgetary situation at the time causes the anticipated project to go down in flames.

Eileen Finnegan - I live in White Oak. The 1997 Master Plan needs updating, but people don't want to open up the plan because they are afraid it will open the floodgates. We are missing the policy area review process. We need it.

Jim – Not having the policy area review hasn't changed anything. In fact, the amount of development has been much less than it was in the past. There has not been any great amount of growth without it.

Mark Elrich –Master Plans are sacred if they include what developers want, but not if there are things they don't want. At the Planning Board, people get 3 minutes to argue what is in the staff report, and that is not enough time to make your point or go after the staff recommendation. This is very problematic. Growth is the problem, even if you build every road in all the plans, there would still be gridlock. I want to run a model with less growth and see what the outcome would be. There is no room in the County for more roads so growth must decrease.

Goldie Rivkin – It is important to have a process for implementation review so elected officials and Planning Board have good information to make decisions. Enforcement staff had to go to Park and Planning but found that papers were missing and records not right. This needs fixing. Also, at the Board of Appeals the problem exists that for certain subdivision violations, the Board feels it can't say no under certain circumstances because they have said yes so many times in the past, and without new standards it wouldn't be discriminatory. The Subdivision Regulations were written for new development, so there are not sufficient standards for infill development; this must be addressed.

Marcie Stickle – We never get to rebut the developer at Planning Board hearings.

Residents speak first, then the developer, and they can't rebut.

Royce – I agree the process needs fixing. Gus – We instituted the time limits because some people would keep the microphone and go on and on. People were left out because of time. But there should be a rebuttal time. On a regulatory item, I believe there is a rebuttal process. The Planning Board wants to give everyone a chance. Maybe if there are a lot of people, they should choose a representative to speak. That might be fairer. You have 4 part-time Commissioners who can't stay all night. Do they need to be full time or should they use a hearing examiner? Dan – Residents should get in early with the staff and educate them on issues they may not be aware of. There should be more in the staff reports that reflect other points of view. Julie – Put your points on paper and send it in; it is more effective than being one of 24 speakers. The record should stay open for a longer period after the hearing. Board members need a time to review and consider all sides. After one of the long hearings, it isn't fair to ask the Board to then vote. The process should be more thoughtful; the Board's brains would be clearer for the vote.

Anne Sleman Effico - Layhill View Citizens Assoc. – What happened in Clarksburg and the fixes won't help them. They are dealing with the Indian Springs CC plan - so many houses without the road that was supposed to come with that development and is in the Master Plan. What can they do?

Rose Crenca – All planning must be coordinated and comprehensive as well as creative and innovative. There is a role for all branches of government. Developers can't wait for ever, so the coordination is thrown out.

Harvey Maisel – In the old days, there was the atmosphere of a team effort - Park and Planning Staff, developers, lawyers, and residents. Now it has a distinct adversarial atmosphere when you go to Park and Planning for a project.

John – The best process is to get all the stakeholders together like in a charette. Everyone can claim authorship. These types of work sessions should be used more.

Kathy Michels – Upper Sligo Citizens Association – Our neighborhood has seen many projects suffering from lack of coordination and information. Planning Staff was helpful, especially the environmental staff. DPS has not been responsive. There is a lack of access for community to the planning process. You have to register your community group in order to get information from Park and Planning. It is not easy for residents to know how to work the system, but the developers know it so will.

Jim Humphrey – The Montgomery County Civic Federation is the best place to come to learn about how to enable your group to be more effective. The ZTA process is politically motivated so even though the master plan process spells out what is coming, the ZTAs make changes that are not in the best interests of the plan.

Jim – There are times when you are working on a piece of land that issues arise. There may be a need for a ZTA, but the ZTA process is totally vetted publicly. Some zones were developed decades ago, and now things may be different. It is a useful planning



tool. In some instances, i.e., the PAHO, the ZTA was passed to protect the residents, not the developer. So it can work both ways.

Royce – The zoning ordinance has developed over decades, piecemeal. Should it be redone? It's very comprehensive but not easily readable; the red-eyed Eskimo process makes it difficult to follow.

Julie – The Planning Board hired Clarion Associates to redo the ordinance. They found that the County's zoning ordinance was not user friendly, was very confusing, worse than the tax code, was not indexed, was not searchable, with provisions scattered all over, and impossible to work with. Now you must be a professional to read it.

Caren Madsen – There should be increased community involvement. The National Seminary Project developers went to the community first with everything they did before they went to the County for anything. Culture needs to change so all developers work that way. They had another neighborhood project that didn't go that way; and that developer felt a sense of entitlement to build what he wanted the way he wanted it. It was very difficult for the residents.

Gus – there are smart and dumb people in every area. It works that way in every industry and situation. Go to your Councilmember and planning staff if you find yourself up against this kind of situation.

Royce – thanks to everyone for coming. On this, the coldest day we have had so far, we are willing to share our warmth.

Nancy – next steps – We want your comments and rebuttal. Please make sure we get them. My office will get it to Royce. On January 15<sup>th</sup> we will receive the Planning Board's management study. PHED will continue to hold their bi-weekly meetings with DPS and the Planning Board. Things are moving forward. Thank you for coming and for your helpful comments!